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SAN DIEGO FLOOD BUSTERS, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

SAN DIEGO FLOOD BUSTERS, INC.,

Plaintiff,

v.

FLOOD MASTERS, INC., a California  
corporation.

Defendants.

CASE NO.

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT**

Plaintiff SAN DIEGO FLOOD BUSTERS, INC. (“FLOOD BUSTERS”) alleges as follows:

1. FLOOD BUSTERS is a California corporation in good standing having its principal place of business in San Diego County engaged in the business of commercial water damage restoration in this County and elsewhere in the State of California.

2. Plaintiff is the sole owner and registrant of that certain primary register Federal service mark, number 2,571,679, of the mark Flood Masters® for commercial water damage restoration services (“The Mark”) having a date of first use in commerce in 2002. A true specimen of The Mark is attached as Exhibit A to this Complaint. The elements of 15 U.S.C. section 1065 having been satisfied, The Mark is incontestable within the meaning of such section and of 15 U.S.C. section 1115(b).

1           3.       Plaintiff is informed and believes and thereon alleges that Defendant FLOOD  
2       MASTERS, INC., is a California corporation doing business in Los Angeles County, Ventura  
3       County, Orange County and Riverside County, California, who, without the consent of the  
4       Plaintiff, has and continues to offer water damage restoration services in Los Angeles County,  
5       Ventura County, Orange County and Riverside County under the name "FLOOD MASTERS."  
6       Plaintiff is informed and believes and thereon alleges that the form of the business so operated is  
7       a corporation owned and/or controlled by such individual Defendant.

8           4.       The Court has subject matter jurisdiction under 15 U.S.C. section 1116, 15 U.S.C.  
9       section 1121 and under 28 U.S.C. section 1331.

10          5.       Venue is proper in this District in that certain acts of infringement complained of  
11       herein occurred in this District and the Defendant resides and does business in this District.

12          6.       Plaintiff is informed and believes and thereon alleges that, commencing on a date  
13       unknown to Plaintiff in calendar year 2015 and continuing to the present date, without the consent  
14       of Plaintiff, Defendant used in commerce reproductions and copies of The Mark and a certain  
15       style of Offending Trade Dress in connection with the sale, the offering for sale, the distribution,  
16       and the advertising of commercial water damage restoration services in Los Angeles County,  
17       Ventura County, Orange County and Riverside County in manners likely to cause confusion with  
18       The Mark and Protected Trade Dress. Plaintiff is informed and believes and thereon alleges that  
19       said Defendant's usage was, and continues to be, by multiple methods including, without  
20       limitation, by placing on the internet advertisements and websites under the name FLOOD  
21       MASTERS so that parties desiring commercial water damage restoration services from the  
22       Plaintiff instead reach said Defendant through internet solicitation or by calling, among other  
23       numbers, (310) 923-7332, (805) 285-7054, (562) 352-0868 and (951) 823-1354; and, in addition,  
24       hold themselves out under such name or names and trade dress in advertisements and by one or  
25       more uniforms, order forms, contracts, business cards, leaflets, flyers and/or stationery  
26       ("Infringing Articles").

27          7.       Plaintiff is informed and believes and thereon alleges that, in or about 2015 and  
28       continuing to the present date, without the consent of the Plaintiff, said Defendant reproduced,

1 copied and merely colorably imitated The Mark and Protected Trade Dress of the Plaintiff and in  
2 the manners alleged in preceding paragraph 6 applied such reproductions, copies or colorable  
3 imitations to the Infringing Articles and to advertisements intended to be used in commerce in  
4 connection with the sale, offering for sale, distribution and advertising of services and in a  
5 manner likely to cause confusion with The Mark

6 8. Defendant's usage, as alleged, constituted uses confusingly similar and merely  
7 colorable imitations of Plaintiff's Mark and constituted infringement.

8 9. Plaintiff is informed and believes and thereon alleges that the infringements by  
9 Defendant were willful.

10 10. Plaintiff suffers irreparable damage for which damages at law are inadequate from  
11 the continued infringements by said Defendant, as alleged. Pursuant to 15 U.S.C. section 1116,  
12 provisional and permanent injunctions should issue to prohibit continuation of the Infringing  
13 Method and all uses in commerce by said Defendant of The Mark including the Protected Trade  
14 Dress and of all confusingly similar expressions for the marking, sale, offering for sale,  
15 distribution and advertisement of commercial water damage repair services, and commanding the  
16 immediate obliteration of such matter where appearing on all Infringing Articles. Where and to  
17 the extent such marks or colorable imitations or confusingly similar versions appear on articles of  
18 personnel attire, contracts, order forms, letterhead, leaflets, flyers and the like, and upon  
19 Infringing Articles, said Infringing Articles should and must be made the subject of an order for  
20 delivery and destruction under 15 U.S.C. section 1118. Plaintiff is informed and believes that  
21 said Defendant continues to employ in commerce and continue to secure commercial water  
22 damage restoration business by internet websites and internet advertisements published  
23 throughout Los Angeles County, Ventura County, Orange County and Riverside County, each of  
24 which identifies the telephone numbers and website information for customers to utilize.

25 11. As part of such injunctions, said Defendant must be commanded to direct at its  
26 expense all sources of telephone service within Los Angeles County, Ventura County, Orange  
27 County and Riverside County to automatically redirect all telephone calls to all such infringing  
28 use telephone numbers in such running telephone directory listings, advertisements and directory

1 assistances to legitimate numbers of Plaintiff; or, absent compliance forthwith with such mandate,  
2 appointing any Clerk or Deputy Clerk of this Court as agent for such Defendant to instruct all  
3 such Telephone Service Providers to disconnect permanently all Diversion Phone Numbers with  
4 no forwarding numbers.

5 12. In addition, as part of such injunctions, said Defendant must be commanded to  
6 direct at its expense all internet service providers to automatically redirect all website inquiries  
7 (including, but not limited to, [www.floodmasters.expert](http://www.floodmasters.expert)) to Plaintiff ([www.floodmasters.com](http://www.floodmasters.com));  
8 or, absent compliance forthwith with such mandate, appointing any Clerk or Deputy Clerk of this  
9 Court as agent for such Defendant to instruct all such Internet Service Providers to disconnect  
10 permanently all Defendant's website identified above.

11 13. Plaintiff has been damaged in an amount to be proven at trial by lost profits and  
12 lost overhead recoveries from commercial water damage restoration jobs diverted from Plaintiff  
13 by said Defendant using Plaintiff's Mark and goodwill. Plaintiff is entitled to treble the actual  
14 damages proven and to costs. Alternatively, Plaintiff is informed and believes and thereon alleges  
15 that said Defendant's profits in and since January 2015 have been attributable to the infringing  
16 uses, as alleged, and the amount of which profits are presently unknown to Plaintiff but will be  
17 proven at time of trial. Plaintiff is entitled to recover money damages against said Defendant in  
18 said amount of said Defendant's profits to be proven at time of trial upon proof by Plaintiff of  
19 Defendant's gross sales, less any amounts proven by the Defendant as elements of cost or  
20 deduction. Plaintiff is entitled to an award of attorney fees for prosecution of this action pursuant  
21 to 15 U.S.C. section 1117(a).

#### 22 **PRAYER**

23 WHEREFORE PLAINTIFF DEMANDS ENTRY OF JUDGMENT AGAINST  
24 DEFENDANT FOR THE FOLLOWING RELIEF:

25 A. For injunctive relief restraining and enjoining said Defendant from making any  
26 uses in commerce of all or any portions of The Mark and of any matter confusing similar thereto  
27 (specifically including prohibiting use of "FLOOD MASTERS" and the Offending Trade Dress)  
28 relating to commercial water damage services and which injunction:

1 i. Mandates that said Defendant at its sole expense instruct all sources of  
2 telephone service within Los Angeles County, Ventura County, Orange County and  
3 Riverside County to automatically redirect all telephone calls to all such infringing use  
4 telephone numbers in such running telephone directory listings, advertisements and  
5 directory assistances to legitimate numbers of Plaintiff; or, absent compliance forthwith  
6 with such mandate, appointing any Clerk or Deputy Clerk of this Court as agent for such  
7 Defendant to instruct all such Telephone Service Providers to disconnect permanently all  
8 Diversion Phone Numbers with no forwarding numbers;

9 ii. Mandates that said Defendant at their sole expense instruct all Internet  
10 Service Providers to automatically redirect website inquiries to Plaintiff's website; or,  
11 absent compliance forthwith with such mandate, appointing any Clerk or Deputy Clerk of  
12 this Court as agent for such Defendant to irrevocably instruct all such Internet Service  
13 Providers to disconnect permanently all of said Defendant's website;

14 iii. Restrains and enjoins said Defendant from performing any commercial  
15 water damage restoration services for any person or entity who contacted said Defendant  
16 at any one or more of the infringing websites or to whom was furnished or exhibited an  
17 Infringing Article;

18 iv. Restrains and enjoins said Defendant from placing or making any further  
19 advertisements, websites, internet solicitations or telephone listings under the names  
20 "FLOOD MASTERS" or that use the Offending Trade Dress or any words, symbols or  
21 device confusingly similar to The Mark; and,

22 v. Commands the delivery up by said Defendant and/or seizure by Marshals  
23 and destruction of all Infringing Articles.

24 B. For a money judgment against said Defendant in the amount of the Defendant's  
25 profit attributable to the infringing uses, or the Plaintiff's damages, whichever are greater, and  
26 treble the actual damages on account of willful infringement;

27 C. For recovery of attorney fees against said Defendant in not less than the default  
28 schedule of the courts for the same; and,

1 D. And for costs of suit and such other relief as may be requested by the Plaintiff and  
2 to which it is entitled at law or in equity.

3  
4 Dated: May 9, 2012

LAW OFFICES OF ROBERT C. MARTINEZ

5  
6 By:



7 Robert C. Martinez  
8 Attorneys for Plaintiff  
9 SAN DIEGO FLOOD BUSTERS, INC.  
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# **EXHIBIT A**



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## Typed Drawing

<b>Word Mark</b>	<b>FLOOD MASTERS</b>
<b>Goods and Services</b>	IC 037. US 100 103 106. G & S: Water damage restoration services. FIRST USE: 19920930. FIRST USE IN COMMERCE: 19920930
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	78085087
<b>Filing Date</b>	September 22, 2001
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	February 26, 2002
<b>Registration Number</b>	2571679
<b>Registration Date</b>	May 21, 2002
<b>Owner</b>	(REGISTRANT) San Diego Flood Busters, Inc. CORPORATION CALIFORNIA 9943 Prospect Ave Santee CALIFORNIA 92071
<b>Attorney of Record</b>	Karl M. Steins
<b>Prior Registrations</b>	1475320;1918357
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FLOOD" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20120517.
<b>Renewal</b>	1ST RENEWAL 20120517

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